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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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DEQUAN LAMONT THOMAS,  
Plaintiff,  
v.  
CHAPLAIN J. YOUNG,  
Defendant.

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Case No. [18-cv-07222-DMR](#) (PR)

**ORDER OF SERVICE**

**I. INTRODUCTION**

Plaintiff, a state prisoner who was previously incarcerated at Salinas Valley State Prison (“SVSP”), has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that Defendant SVSP Chaplain J. Young refused to provide him with religious meals that accommodates his religious beliefs in violation of his constitutional rights. Plaintiff seeks monetary and punitive damages.

This matter has been assigned to the undersigned Magistrate Judge. Dkt. 3. Plaintiff has consented to magistrate judge jurisdiction. Dkt. 4.

His motion for leave to proceed *in forma pauperis* will be granted in a separate written Order.

Venue is proper because the events giving rise to the claims are alleged to have occurred at SVSP in Monterey County, which is located in this judicial district. *See* 28 U.S.C. § 1331(b).

**II. DISCUSSION**

**A. Standard Of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims

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1 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek  
2 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se*  
3 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
4 Cir. 1988).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
6 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
7 the alleged violation was committed by a person acting under the color of state law. *West v.*  
8 *Atkins*, 487 U.S. 42, 48 (1988).

9 **B. First Amendment Claim**

10 Plaintiff claims that he was denied his religious meals at SVSP beginning on the date of his  
11 arrival at the prison on January 10, 2018 and for fifty-six days thereafter. Dkt. 1 at 3. Inmates  
12 “have the right to be provided with food sufficient to sustain them in good health that satisfies the  
13 dietary laws of their religion.” *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987).  
14 Allegations that prison officials refuse to provide a healthy diet conforming to sincere religious  
15 beliefs states a cognizable claim under section 1983 of denial of the right to exercise religious  
16 practices and beliefs. *See Ward v. Walsh*, 1 F.3d 873, 877 (9th Cir. 1993) (Jewish inmate claiming  
17 denial of kosher diet), *cert. denied*, 510 U.S. 1192 (1994); *McElyea*, 833 F.2d at 198 (same);  
18 *Moorish Science Temple, Inc. v. Smith*, 693 F.2d 987, 990 (2d Cir. 1982) (Muslim inmate claiming  
19 denial of proper religious diet). Plaintiff states that Defendant Young is responsible for denying  
20 him his religious meals at SVSP. This claim is sufficient to proceed against Defendant Young.

21 **III. CONCLUSION**

22 For the foregoing reasons, the court orders as follows:

23 1. Plaintiff’s complaint states a cognizable First Amendment claim against Defendant  
24 Young.

25 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
26 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint  
27 and all attachments thereto (Dkt. 1), a Magistrate Judge jurisdiction consent form, and a copy of  
28 this Order to **SVSP Chaplain J. Young**. The Clerk shall also mail a copy of the complaint and a

1 copy of this Order to the State Attorney General's Office in San Francisco. Additionally, the  
2 Clerk shall mail a copy of this Order to Plaintiff.

3. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires  
4 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant  
5 to Rule 4, if Defendant, after being notified of this action and asked by the court, on behalf of  
6 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of  
7 such service unless good cause be shown for their failure to sign and return the waiver form. If  
8 service is waived, this action will proceed as if Defendant had been served on the date that the  
9 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendant will not be required to serve  
10 and file an answer before **sixty (60) days** from the date on which the request for waiver was sent.  
11 (This allows a longer time to respond than would be required if formal service of summons is  
12 necessary.) Defendant is asked to read the statement set forth at the foot of the waiver form that  
13 more completely describes the duties of the parties with regard to waiver of service of the  
14 summons. If service is waived after the date provided in the Notice but before Defendant has been  
15 personally served, the Answer shall be due **sixty (60) days** from the date on which the request for  
16 waiver was sent or **twenty (20) days** from the date the waiver form is filed, whichever is later.  
17 **Defendant shall also respond to the Notice of Assignment of Prisoner Case to a United States**  
18 **Magistrate Judge for Trial by filing a consent/declination form on the date the Answer is**  
19 **due.**

20. Defendant shall answer the complaint in accordance with the Federal Rules of Civil  
21 Procedure. The following briefing schedule shall govern dispositive motions in this action:

22. a. No later than **sixty (60) days** from the date their answer is due, Defendant  
23 shall file a motion for summary judgment or other dispositive motion. The motion must be  
24 supported by adequate factual documentation, must conform in all respects to Federal Rule of  
25 Civil Procedure 56, and must include as exhibits all records and incident reports stemming from  
26 the events at issue. A motion for summary judgment also must be accompanied by a *Rand*<sup>1</sup> notice  
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28<sup>1</sup> *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

so that Plaintiff will have fair, timely and adequate notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out in Rand must be served concurrently with motion for summary judgment). A motion to dismiss for failure to exhaust available administrative remedies must be accompanied by a similar notice. However, the court notes that under the new law of the circuit, in the rare event that a failure to exhaust is clear on the face of the complaint, Defendant may move for dismissal under Rule 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b) motion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc) (overruling *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on the face of the complaint, Defendant must produce evidence proving failure to exhaust in a motion for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most favorable to Plaintiff shows a failure to exhaust, Defendant is entitled to summary judgment under Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at 1168.

If Defendant is of the opinion that this case cannot be resolved by summary judgment, they shall so inform the court prior to the date the summary judgment motion is due. All papers filed with the court shall be promptly served on Plaintiff.

b. Plaintiff's opposition to the dispositive motion shall be filed with the court and served on Defendant no later than **twenty-eight (28) days** after the date on which Defendant's motion is filed.

c. Plaintiff is advised that a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact—that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is

1 entitled to judgment as a matter of law, which will end your case. When a party you are suing  
2 makes a motion for summary judgment that is properly supported by declarations (or other sworn  
3 testimony), you cannot simply rely on what your complaint says. Instead, you must set out  
4 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,  
5 as provided in Rule 56(e), that contradicts the facts shown in the defendant's declarations and  
6 documents and show that there is a genuine issue of material fact for trial. If you do not submit  
7 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.  
8 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154  
9 F.3d at 962-63.

10 Plaintiff also is advised that—in the rare event that Defendant argues that the failure to  
11 exhaust is clear on the face of the complaint—a motion to dismiss for failure to exhaust available  
12 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without  
13 prejudice. To avoid dismissal, you have the right to present any evidence to show that you did  
14 exhaust your available administrative remedies before coming to federal court. Such evidence  
15 may include: (1) declarations, which are statements signed under penalty of perjury by you or  
16 others who have personal knowledge of relevant matters; (2) authenticated documents—  
17 documents accompanied by a declaration showing where they came from and why they are  
18 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements  
19 in your complaint insofar as they were made under penalty of perjury and they show that you have  
20 personal knowledge of the matters state therein. As mentioned above, in considering a motion to  
21 dismiss for failure to exhaust under Rule 12(b)(6) or failure to exhaust in a summary judgment  
22 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed  
23 issues of fact with regard to this portion of the case. *Albino*, 747 F.3d at 1168.

24 (The notices above do not excuse Defendant's obligation to serve similar notices again  
25 concurrently with motions to dismiss for failure to exhaust available administrative remedies and  
26 motions for summary judgment. *Woods*, 684 F.3d at 935.)

27 d. Defendant shall file a reply brief no later than **fourteen (14) days** after the  
28 date Plaintiff's opposition is filed.

e. The motion shall be deemed submitted as of the date the reply brief is due.

No hearing will be held on the motion unless the court so orders at a later date.

5. Discovery may be taken in this action in accordance with the Federal Rules of Civil Procedure. Leave of the court pursuant to Rule 30(a)(2) is hereby granted to Defendant to depose Plaintiff and any other necessary witnesses confined in prison.

6. All communications by Plaintiff with the court must be served on Defendant or their counsel, once counsel has been designated, by mailing a true copy of the document to them.

7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes while an action is pending must promptly file a notice of change of address specifying the new address. *See* L.R. 3-11(a). The court may dismiss without prejudice a complaint when: (1) mail directed to the *pro se* party by the court has been returned to the court as not deliverable, and (2) the court fails to receive within sixty days of this return a written communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b).

8. Upon a showing of good cause, requests for a reasonable extension of time will be granted provided they are filed on or before the deadline they seek to extend.

IT IS SO ORDERED.

Dated: April 8, 2019

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**DONNA M. RYU**  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEQUAN LAMONT THOMAS,  
Plaintiff,  
v.  
J. YOUNG,  
Defendant.

Case No. 4:18-cv-07222-DMR

## **CERTIFICATE OF SERVICE**

J. YOUNG,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 8, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

DeQuan Lamont Thomas ID: AI5898  
3000 W. Cecil Avenue  
Delano, CA 93216-6000

Dated: April 8, 2019

Susan Y. Soong  
Clerk, United States District Court

By: Ivy Lerma Gatch, Deputy Clerk to the  
Honorable DONNA M. RYU